

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

FM Table of Allotments)

FM Broadcast Stations)

(Broken Bow, Oklahoma))

MB Docket No. 02-301

RM- 10578

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS AND COUNTERPROPOSAL

Radio One Licenses, L.L.C. ("ROL"), licensee of Station KTXQ-FM,' at Gainesville, Texas, by its counsel and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its comments and counterproposal in the above-captioned rule making proceeding.' Because the allotment for Broken Bow proposed herein impacts allotments proposed in other docketed proceedings, which in turn impact ROL's application to modify and significantly improve the facilities of KTXQ-FM (FCC File No. 20010830ABN, as amended), ROL urges the Commission's staff to coordinate its action in the multiple proceedings and adopt the counterproposal set forth herein.³

¹ Effective June 6, 2002, the call letters for KTXQ-FM changed to KSOC(FM). For ease of reference, the station will continue to be referred to herein as KTXQ-FM.

² ROL acknowledges that on October 10, 2002, counsel for Maurice Salsa, Ieraldine Anderson and Charles Crawford, submitted a "Statement in Support of Proposed Alternative Resolution of Proceedings" in MM Docket Nos. 01-216 and 01-209, which urged the Commission to **adopt** the proposed alternative resolution offered by ROL in its July 16, 2002 Reply Comments in these dockets and with respect to RM-10495 and RM-10496, filed pursuant to FCC Public Notice Report No. 2559, released July 1, 2002. If the Commission grants the relief sought by ROL in its Reply Comments as supported by the "Statement" tiled on behalf of Messrs. Salsa and Crawford and Ms. Anderson, Commission action on the instant Comments and Counterproposal may become moot.

³ Specifically, the allotment of Channel 232A at Broken Bow, Oklahoma impacts proposals tiled by multiple parties in many dockets including MM Docket Nos. 01-209, 01-216, 01-255, 01-269, RM-10495 and RM-10496, in which ROL has submitted Comments and Counterproposals and Reply Comments. ROL hereby incorporates by

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As explained below, ROL does not oppose the allotment of a site-restricted Channel 232A at Broken Bow, Oklahoma, **provided that** the Commission expeditiously grant ROL's proposed global resolution of numerous conflicting proceedings, which is set forth in the Reply Comments of ROL, filed July 16, 2002, in MM Docket Nos. 01-216 and 01-209, RM-10495 and RM-10496 ("July Reply Comments") and is proffered as a counterproposal herein. ROL's resolution proposes the allotment of Channel 262C3 at Valliant, Oklahoma, in lieu of Channel 234C originally proposed, and would allow the allotment of Channel 232A at Broken Bow proposed herein. In support whereof, ROL respectfully states as follows:

I. ROL does not Oppose Allotment of a Site-Restricted Channel 232A at Broken Bow PROVIDED THAT ROL's July 16, 2002 Proposal in MM Docket Nos. 01-209 and 01-216 and RM-10495 and RM-10496 is Granted

ROL recently urged the Commission to reject the Petition for Rulemaking filed by Jeraldine Anderson on October 16, 2001 to allot Channel 232A at Broken Bow, which is the subject of the instant petition for rule making. ROL argued that the proposal is procedurally defective because it constitutes a prohibited request for contingent Commission action in violation of Sections 73.3517 and 1.401(e) of the Commission's Rules, as **well** as the policy established by the Commission in Cut and Shoot, Texas, 5 CR 447 (1996). See, July Reply Comments. Specifically, ROL argued that Ms. Anderson's petition is unacceptable because the petition is contingent upon the Commission grant of a pending request to withdraw an earlier-filed petition for rule making at Clayton, Oklahoma (MM Docket No. 01-191).

In its July Reply Comments, ROL also argued that the Broken Bow petition constitutes an untimely-filed counterproposal and raised questions about the *bona fides* of the Broken Bow petition. Further, ROL stressed that even if the Broken Bow allotment were not considered

reference all of its previously filed pleadings in all of these proceedings to the extent that they impact the proposed Broken Bow allotment.

defective, it should be denied on substantive grounds as comparatively inferior under the evaluation required by Section 307(b) of the Communications Act of 1934, as amended, to ROL's proposed resolution of MM Docket Nos. 01-216 and 01-209. See ROL's Reply Comments in MM Docket No. 01-216 and 01-209, filed November 6, 2001 and previously incorporated herein by reference ("November Reply Comments")

Notwithstanding its earlier objections to the acceptance of Anderson's petition and the allotment of Channel 232A at Broken Bow as that community's third local station, ROL does not oppose the instant proposal to allot a site-restricted Channel 232A at Broken Bow **provided that** the Commission expeditiously approve ROL's proposed global solution for Docket No. 01-216.

11. ROL Counterproposal

In its July Reply Comments, ROL proposed an allotment scheme that resolves the conflicting issues in Docket Nos. 01-216, 02-301, and several other docketed and undocketed proceedings, while allowing the Commission to separate the award of a first service at Valliant and the modification of Station KTXQ-FM from pending rulemakings involving another proposed allotment at Broken Bow (MM Docket No. 01-269) and Wright City (MM Docket No. 01-255, RM-10265). Specifically, ROL proposed the allotment of a site-restricted Channel 262C3 in lieu of the originally proposed Channel 234C3 at Valliant. If adopted, ROL's proposal would accomplish the following:

1. Allow the allotment of a new C3 FM channel to Valliant, Oklahoma (Channel 262C3) as that community's first local service;
2. Protect the potential allotment of Channel 265A at Broken Bow, which was filed as a counterproposal by the licensee of Station KTCY at Pilot Point, Oklahoma to secure the award of a second service to Broken Bow (in lieu of channel 285A);
3. Allow for a site-restricted allotment of Channel 232A at Broken Bow, **as** proposed in the instant proceeding (which, at the time of ROL's July Reply Comments, was undocketed).

ROL's proposed solution is supported by Maurice Salsa, the original proponent of Channel 234C3 at Valliant, Jeraldine Anderson, the proponent of the allotment in the instant proceeding, and Charles Crawford. See, Statement of Maurice Salsa in Support of Proposed Alternative Resolution of Proceedings, filed October 10, 2002 ("Salsa Statement").

ROL submits that the adoption of ROL's proposed solution to the conflicting rule makings referenced above serves the public interest. The proposal will enable each of the communities involved to be allotted a new FM channel, and will allow grant of ROL's application to modify the facilities of Station KTXQ-FM and grant of KTCY's application to upgrade the facilities of Station KTCY. Accordingly, ROL counter proposes herein that the Commission adopt the allotments as follows:

Valliant, Oklahoma	Channel 262C3
Broken Bow, Oklahoma	Channels 291C2, 265A, 232A
Pilot Point, Texas	Channel 285C0

~~See also~~, Engineering Exhibit accompanying ROL's July Reply Comments.⁴

ROL's proposed resolution provides for new allotments at several communities and allows for important facilities modifications at Stations KTXQ-FM and KTCY that will benefit the listening public. Such considerations may not be ignored by the Commission's staff in the allotment process. Where the Commission is presented with a conflict between a proposed allotment and a pending FM modification application, it is the Commission's policy to accommodate both proposals where possible. In *Conflicts Between Applications and Petitions for Rulemaking to Amend the Table of Allotments*, 7 FCC Rcd 4817 (1992), recon. granted in part and denied in part, 8 FCC Rcd **4743** (1993), the Commission stated that: "First, we try to

⁴ ROL's proposed alternative engineering proposal is also premised upon the dismissal of petitions for rulemaking filed for Antlers and Albion, Oklahoma, by Charles Crawford and Maurice Salsa, respectively. Both proponents have requested dismissal of their petitions. Jeraldine Anderson has an undocketed petition for an allotment at Millerton, Oklahoma that would be subject to the outcome of the Commission's action in MM Docket No. 01-216, which is supported by Ms. Anderson. See Salsa Statement.

restrict the site of the proposed allotment or to use an alternative channel to eliminate the conflict." 7 FCC Rcd at 4917; see also *Ocean Shores, Washington*, 13 FCC Rcd 2833, 2834 n. 2 (M.M.B. 1998), *Weuerville, California*, 12 FCC Rcd 2965 (M.M.B. 1997), and *Kerman, California*, 12 FCC Rcd 2965 (M.M.B. 1997) (alternative channels used to eliminate conflicts between rule making proposals and pending modification applications); *Huntingdon, Tennessee*, 8 FCC Rcd 3918 (M.M.B. 1993) (site restriction used to eliminate conflict between proposed new allotment and station upgrade proposal). Thus, the Commission has repeatedly recognized that there is substantial public interest benefit in adopting allotment schemes that allow for existing, operating stations to improve their service to the public at the earliest possible time, while still providing new allotments that will serve the public at some future date.

ROL knows of no rationale that would support the Commission's failure to adopt ROL's proposal set forth in its July Reply Comments and proffered herein as a counterproposal to resolve multiple conflicting rule making proceedings. However, should that occur, ROL opposes the allotment of Channel 232A proposed herein, because it could adversely affect **an** alternative outcome of the conflicting proposals that ROL has endeavored to resolve. That is, if the Commission does not adopt the counterproposal set forth herein, which includes the allotment of Channel 262C3 at Valliant, Oklahoma instead of Channel 234C3 originally proposed, an alternative resolution of the Valliant and related proceedings could conflict with the instant proposal for Channel 232A at Broken Bow. Allotment of Channel 232A at Broken Bow **without** adoption of the allotments proposed by ROL in its July Reply Comments as a global solution in the conflicting rule making proceedings described herein would jeopardize the resolution of the multiple proceedings affected thereby, a result clearly not in the public interest.

III. Conclusion

For the reasons set forth above, ROL respectfully requests that the Commission's Allocations Branch act expeditiously to adopt the allotment plan set forth by ROL in its July Reply Comments and offered herein as a counterproposal, which will allow the Commission's Mass Media Bureau to grant promptly the pending KTXQ-FM modification application. In the absence of such adoption, ROL hereby states its opposition to the allotment at Broken Bow proposed herein for the reasons set forth above

Respectfully submitted,

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November 18, 2002

CERTIFICATE OF SERVICE

I, Margaret L. Truitte, a secretary in the law firm of Davis Wright Tremaine LLP, do hereby certify that I have on this 18th day of November, 2002, caused to be mailed by first-class mail, postage prepaid, copies of the foregoing "Comments and Counterproposal" to the following:

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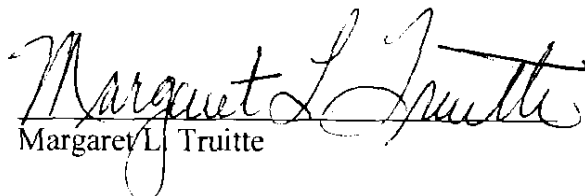
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